

## **SETTLEMENT AGREEMENT**

This Settlement Agreement ("Agreement") is entered into as of this 6th day of December 2006, between Michael Shames ("Plaintiff") on behalf of himself and a Settlement Class (defined herein), on the one hand, and the City of San Diego ("the City"), on the other, with respect to the following matters.

WHEREAS, Plaintiff filed a class action lawsuit on June 16, 2004 in the Superior Court for the County of San Diego, captioned *Michael Shames, an individual, on behalf of all others similarly situated v. the City of San Diego*, as Case No. GIC831539 against the City for violation of Cal. Const. art. XIII D, Section 6(b)(3) and breach of contract;

WHEREAS, Plaintiff alleged that the City overcharged Single Family Residential ("SFR") sewer account holders in the City's Municipal System from May 23, 1994 through September 30, 2004, as a result of a failure to include a cost recovery component for biological oxygen demand ("BOD") in the City's sewer rate structure;

WHEREAS, on or about August 27, 2004, the City demurred to the Complaint;

WHEREAS, on or about September 22, 2004, Plaintiff filed a First Amended Complaint ("FAC") revising some of the allegations, but alleging the same two causes of action for violation of Cal. Const. art. XIII D, Section 6(b)(3) and breach of contract;

WHEREAS, on or about October 20, 2004, the City demurred to the FAC;

WHEREAS, on or about December 10, 2004, the Court overruled the City's demurrer to the FAC;

WHEREAS, on or about December 13, 2004, the City filed an Answer to the FAC generally denying all of the allegations;

WHEREAS, the City produced thousands of relevant documents that were reviewed by Class Counsel;

WHEREAS, Plaintiff retained a sewer rate expert who worked with the City's consultant and the City's Wastewater staff in calculating the alleged overcharges;

WHEREAS, on or about April 6, 2005, Plaintiff filed a motion for class certification;

WHEREAS, before the motion for class certification was heard, the parties agreed to explore a resolution of the Action through mediator Judge Harry McCue (Ret.), a well-respected mediator with substantial experience in complex class action litigation;

WHEREAS, from September 7, 2005 through present, the parties attended eleven mediation sessions with Judge McCue<sup>1</sup>, and have consulted with him separately via teleconference numerous times as well;

WHEREAS, through the diligent efforts of the parties, the attorneys, and Judge McCue, the parties have reached a settlement of this Action, subject to the approval of the Court;

WHEREAS, Class Counsel have thoroughly analyzed the applicable law and all of the facts, and have concluded that the proposed settlement herein is fair and reasonable and in the best interest of the Settlement Class because it provides substantial monetary relief and avoids the considerable risks and delays of further litigation;

WHEREAS, the City believes that the proposed settlement herein is desirable in order to avoid further significant burden, expense, and inconvenience of protracted litigation;

WHEREAS, following the negotiations of the settlement, Class Counsel and the City requested that Judge McCue recommend an appropriate attorney fee to Class Counsel in connection with their work in this Action;

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<sup>1</sup> September 7, 30, 2005; October 20, 2005; January 12, 2006; April 20, 2006; May 23, 2006; June 5, 28, 2006; August 7, 2006; September 6, 2006; and October 24, 2006.

WHEREAS, Plaintiff seeks to represent a Settlement Class, and the City agrees that a class should be certified solely for the purpose of effectuating this settlement; and

THEREFORE, it is stipulated and agreed by and between the undersigned parties and attorneys that this action be fully and finally settled, on the following terms and conditions:

1. Definitions

As used herein, the following terms shall have the meanings indicated:

a. "Action" means the case pending in the Superior Court for the County of San Diego, captioned *Michael Shames, an individual, on behalf of all others similarly situated v. the City of San Diego*, Case No. GIC831539.

b. "Agreement" means this Settlement Agreement.

c. "Class Counsel" means the law firms Krause, Kalfayan, Benink & Slavens, LLP; Casey Gerry Schenk Francavilla Blatt & Penfield, LLP; Capretz & Associates; and Herman, Herman, Katz & Cotlar LLP.

d. "Class Members" and "Settlement Class" mean all SFR Account Holders in the City's Municipal Sewer system who held sewer accounts during any time period May 23, 1994 through September 30, 2004, inclusive.

e. "Class Period" means the period between May 23, 1994 through September 30, 2004, inclusive.

f. "Counsel Fees and Expenses" means fees and expenses allowed by the Court that are sought and were incurred by Class Counsel in the prosecution of the Action.

g. "Court" means the Superior Court for the County of San Diego.

h. "Current SFR Customers" means SFR Account Holders who hold sewer accounts in the City's Municipal System as of the date the Preliminary Order is issued.

i. "Fairness Hearing" means the hearing held by the Court to consider final approval of the Settlement pursuant to Cal. Rules Ct., Rule 1859(e).

j. "Final Order" means the final order and judgment, substantially in the form attached hereto as Exhibit D, entered by the Court pursuant to paragraph 4 hereof, which shall approve the Agreement and dismiss this Action.

k. "Lead Plaintiff" means Michael Shames.

l. "Monthly SFR Customer" means an SFR Account Holder who, in any given month during the Payment Period, holds a sewer account in the City's Municipal System connected to a water meter that was in existence on September 30, 2004. This definition specifically excludes all SFR Account Holders who hold sewer accounts in the City's Municipal System connected to water meters installed or put into use on or after October 1, 2004.

m. "Municipal System" means the City of San Diego's sewer operation that services sewer customers within the City limits.

n. "Net Settlement Revenues" means the revenues remaining to be paid from the Settlement Revenues after distributions are made to Non-Current SFR Customers, Notification Costs are deducted, and costs and expenses (but not Class Counsel fees) are reimbursed.

o. "Non-Current SFR Customers" means SFR Account Holders who do not currently hold sewer accounts in the City's Municipal System and are members of the Settlement Class.

p. "Summary Notice to Class" means the Summary Notice of Class Action Settlement that is attached hereto as Exhibit "B" to be inserted into monthly sewer bills and published in the *San Diego Union-Tribune*.

q. "Notification Costs" means the reasonable cost of mailing and publishing the Notice to Class, and posting the Web Notice, including not but limited to, duplication and printing costs, web hosting and programming, postage, and advertising / publication fees.

r. "Payment Period" means the four-year period beginning the 90<sup>th</sup> day after the rate increase described in paragraph 11.

s. "Preliminary Order" means the order contemplated by Cal Rules of Ct., Rule 1859(d), substantially in the form attached as Exhibit "A" hereto which shall, among other things, i) preliminarily approve the Agreement ii) authorize the form and manner of the notices to the Class and ii) set a date for the Fairness Hearing.

t. "Proof of Claim Form" means the document, a form of which is attached hereto as Exhibit "E," to be provided to and completed by Non-Current SFR Customers.

u. "Settled Claims" shall mean all claims, causes of action, demands, rights or liabilities, relating to the allegations asserted in this Action, including but not limited to constitutional violations, breach of contract, negligence, fraud, violations of any state or federal statutes, rules or regulations, and any unknown claims relating to the allegations asserted in this Action that could have been asserted in this or any other forum.

v. "Settlement Revenues" means the FORTY MILLION DOLLARS (\$40,000,000.00) that the City of San Diego has agreed to pay to settle this Action.

w. "SFR Account Holders" means City of San Diego Single-Family Residential sewer customers in the City's Municipal System.

x. "Web Notice" means the Notice to Class of Pendency of Class Action Settlement attached hereto as Exhibit "C" to be published on a web site.

2. For settlement purposes only, the parties hereto stipulate and agree that the following Settlement Class shall be certified:

All City of San Diego Single Family Residential ("SFR") sewer account holders in the City's Municipal System who held accounts during any time period from May 23, 1994 through September 30, 2004, inclusive.

If for any reason the Court does not enter a Final Order, the City's stipulation to certification of the class shall be null and void and this Agreement may not be used or relied upon by Plaintiff in this Action.

3. Upon execution of this Agreement, counsel for Plaintiff and the Settlement Class shall file a motion asking the Court to enter a Preliminary Order in the form attached as Exhibit "A" granting preliminary approval of this Agreement and certifying the Settlement Class. The order

shall require the City, within 60 days to 1) mail the Summary Notice to Class in the form attached as Exhibit “B” to Current SFR Customers, directing the account holders to the Web Notice. The order shall require the Plaintiff to post the Web Notice in the form attached hereto as Exhibit “C” no later than the date the first Summary Notice to Class is mailed. The order shall also require the City to publish the Summary Notice to Class in the *San Diego Union-Tribune* ten (10) days following the mailing of the Summary Notice. The City shall be entitled to pay for Notification Costs from the Settlement Revenues, but should final approval of the Agreement not be granted for any reason, the City shall bear the burden of the Notification Costs.

4. Thereafter, Plaintiffs’ Counsel shall file a motion requesting the Court to enter a Final Order in the form attached as Exhibit “D,” granting final approval of the settlement.

5. This Agreement and the obligations herein are conditioned upon the City receiving legal and accounting opinions regarding the propriety of paying Settlement Revenues to SFR Customers from the Wastewater Enterprise Fund. Specifically, the City is discussing the propriety of raising sewer rates for all classes of users to pay for a credit to the SFR Customers. In the event that this payment mechanism violates general accounting standards or the State Water Resources Control Board fails to approve this payment mechanism, both parties’ obligations under this Agreement shall be null and void and this Agreement shall not be used or relied upon for any purpose by any party or person.

6. Putative members of the Settlement Class shall be permitted to opt out of the Settlement Class. Persons who timely and properly opt out (as described in the Web Notice) a) shall not participate in any way in this Agreement, b) shall not be deemed to have released the Released

Parties described in paragraph 15, and c) shall have all rights and claims relating to this Action that they held against the City as of June 16, 2004. Each Class Member who does not timely opt-out of the Settlement Class shall be deemed to have released all of the Released Parties described in paragraph 15 to the extent of the release set forth in paragraph 15. The City shall also have a right to void this Agreement under the conditions described in the Termination Rights Agreement, executed concurrently herewith. The Termination Rights Agreement shall be lodged with the Court under seal in connection with the motions described in paragraphs 3 and 4.

7. No later than five (5) days prior to the final approval hearing, Class Counsel shall prepare and file with the Court, and serve on the City, a list of all persons who have timely opted-out of the Settlement Class.

8. No later than five (5) days prior to the final approval hearing, Class Counsel shall also prepare and file with the Court, and serve on the City, an application for attorney's fees. Judge McCue recommended to Class Counsel and the City that Class Counsel be awarded 12.5 % of the Settlement Revenues (\$5,000,000) in attorneys' fees. Pursuant to Judge McCue's recommendation, Class Counsel intends to apply for this fee. The City does not take any position with respect to this fee and will neither support nor oppose it at the Fairness Hearing.

9. For a full and final settlement of this matter, the City agrees to generate Settlement Revenues of FORTY MILLION DOLLARS (\$40,000,000.00) during the Payment Period. Specifically, the City shall generate \$10,000,000 per year for four years.

10. Because the SFR Account Holders change from month to month and because it would be impracticable to pay funds directly to thousands of account holders that no longer reside at the



addresses at which they were allegedly overcharged, the Settlement Revenues shall be distributed as follows:

a) For each Non-Current SFR Customer who, within sixty (60) days of the publication of the Notice to Class in the *San Diego Union-Tribune*, submits a Proof of Claim Form (attached hereto as "Exhibit E") under penalty of perjury that establishes that i) the Non-Current SFR Customer is not a Monthly SFR Customer and ii) that the Non-Current SFR Customer was an SFR Account Holder during any period from May 23, 1994 through September 30, 2004, that Non-Current SFR Customer shall be paid \$1.50 for each month the account was open during that period. The City shall, within 90 days of the rate increase described in paragraph 11 below, make a lump sum payment to each Non-Current SFR Customer submitting a qualifying Proof of Claim Form;

b) Subject to Court approval, Class Counsel shall be reimbursed for its reasonable costs and expenses from the Settlement Revenues within 60 days of the rate increase described in paragraph 11 below; and

c) All funds remaining from the Settlement Revenues after Non-Current SFR Customers are paid, the account under paragraph 13 is funded, and Notification Costs and reasonable costs and expenses are deducted (the "Net Settlement Revenues"), shall be distributed as follows to Monthly SFR Customers during the Payment Period beginning within 90 days of the rate increase described in paragraph 11 below.

| Payment Period | Monthly SFR Customers                                                                                                                                                                  | Class Counsel    |
|----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|
| Year 1         | \$10,000,000 minus payments made under paragraphs 10(a) and 10(b); minus Notification Costs; minus \$20,000 for the paragraph 13 account; and minus Class Counsel Fees in this Period. | 25% of Fee Award |
| Year 2         | \$10,000,000 minus Class Counsel Fees in this Period                                                                                                                                   | 25% of Fee Award |
| Year 3         | \$10,000,000 minus Class Counsel Fees in this Period                                                                                                                                   | 25% of Fee Award |
| Year 4         | \$10,000,000 minus Class Counsel Fees in this Period                                                                                                                                   | 25% of Fee Award |

The payments to the Monthly SFR Customers shall be made in the form of a credit on the Monthly SFR Customers' monthly sewer bills. The monthly credits for each account in each month in each year shall be equal (i.e. all monthly payments in Year 1 are equal, but are different than Year 2 payments). The City may exclude any person who recovered under paragraph 10(a) from payment of these monthly credits in the event the person later becomes a Monthly SFR customer. The Class Counsel fees that are awarded shall be paid, in full, in four annual installments, the first beginning on the 120<sup>th</sup> day following the rate increase described in paragraph 11 below.

11. The City represents that it intends to generate Settlement Revenues of \$40,000,000 through sewer rate increases. The State Water Resource Control Board has informed the City that this revenue stream is a cost to the Wastewater Enterprise Fund and must be allocated across all ratepayer classes, including SFR Customers. In order to ensure that SFR Customers will receive a \$40,000,000 benefit, the City will credit Monthly SFR customers who pay this rate increase, an amount equal to the rate increase, plus the amounts described in paragraph 10(c). The City shall use its best efforts to implement this rate increase no later than 90 days following entry of the Final Order.

12. The City agrees to permit an independent and qualified 501(c)(3) non-profit organization to place a solicitation insert into SFR Account Holder billing statements no more than three times a year for five years. The purpose of these inserts will be to allow the organization to raise funds to be used to hire experts to review and evaluate the City's future sewer and water rate setting activities. The language of the inserts shall be limited to that which is reasonably necessary to raise such funds, and shall be subject to approval by the Mayor of San Diego and City Council, which shall not be unreasonably withheld. No later than twenty (20) days prior to the Fairness Hearing, Plaintiff, on the one hand, and the Mayor of San Diego and City Council, on the other, will exchange up to three recommendations for the non-profit organization. In the event of a dispute over the choice of a non-profit organization or the language of the inserts, then Judge Prager will be tasked with arbitrating the dispute. Access to the City's billing packets will be granted within 60 days of Judge Prager's approval of the non-profit organization. The City also agrees to make information and data relating to the rate setting activities reasonably available to the experts retained by the non-profit organization. The cost of the solicitation

inserts will be borne by the non-profit organization, however, attendant postage and insertion costs will not be charged to the organization.

13. Within 120 days after the entry of the Final Order, the City shall place \$20,000 of the Settlement Revenues into an interest-bearing account for the benefit of the non-profit organization described in paragraph 12. The non-profit organization shall be entitled to utilize those funds solely for the purpose of organizing and funding its efforts to retain the experts contemplated in paragraph 12. If no non-profit organization is selected within twelve months of the Final Order or the selected non-profit organization declines to engage in these activities, the funds shall be returned to the Settlement Revenues and distributed in accordance with paragraph 10.

14. The City agrees that it shall comply with all state and federal statutes, rules, and regulations relating to the City's state loan obligations and federal Clean Water Act grants in connection with its sewer rate setting process, including, but not limited to a) Section 204(b)(1)(A) of the Federal Clean Water Act, b) 40 CFR 35.929-2(a) and (b), and c) 40 CFR 35.2140.

15. For the consideration stated herein, the receipt and sufficiency of which are hereby acknowledged, Plaintiff and the Settlement Class agree to the entry of a Final Order in the form attached as Exhibit "D," and Plaintiff and the Settlement Class, hereby remise, release and forever discharge the City, and its current and former employees, officers, agents, assigns, divisions, contractors, attorneys, mayor, and council members (together as "Released Parties"), from any and all claims, causes of action, demands, rights or liabilities, relating to the allegations asserted in this Action, including but not limited to constitutional violations, breach of contract,

negligence, fraud, violations of any state or federal statutes, rules or regulations, and any unknown claims relating to the allegations asserted in this Action that could have been asserted in this or any other forum ("Settled Claims"). Each Class Member who does not opt out on a timely basis hereby covenants and agrees that he or she shall not hereafter assert or continue to assert any claim, suit, cause of action or demand relating to the allegations asserted in the Action, whether individually or on behalf of a class, against the Released Parties.

16. The Parties represent, warrant and agree that they have been fully advised of the content of Section 1542 of the Civil Code of the State of California, which reads as follows:

**"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."** The Parties and the Settlement Class hereby expressly waive and relinquish all rights and benefits under that section and any law or legal principle of similar effect in any jurisdiction with respect to the release granted in this Agreement.

17. Plaintiff and the Settlement Class further agree and stipulate that any rights, claims, or causes of action that they may hold against other non-SFR Account Holders relating to or arising from the allegations in the FAC are hereby assigned to the City of San Diego. Plaintiff and the Settlement Class do not represent whether they hold any such claims or whether such claims are viable. Furthermore, this Agreement is not intended in any way to impact or address any rights, claims, or causes of actions that the City may have against third parties relating to this Action, including the City's cross-complaint filed in the Action against ISP Alginates, Inc., J.M. Huber Corporation, and C.P. Kelco, a business entity.

18. Unless otherwise agreed by all parties, in writing, this Agreement shall be null and void unless the Court enters the Final Order. However, a reduction by the Court of the attorneys' fees and expenses sought by Class Counsel shall not affect any of the parties' other rights and obligations under the Agreement.

19. This Agreement may be executed in separate counterparts.

20. This Agreement shall be binding upon and inure to the benefit of the Plaintiff, the Settlement Class and the Released Parties.

21. This Agreement contains an entire, complete, and integrated statement of each and every term and provision agreed to by and among the parties; it is not subject to any condition not provided for herein. This Agreement shall not be modified in any respect except by a writing executed by all the parties hereto.

22. None of the parties hereto shall be considered to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

23. The parties hereto represent that they have consulted with counsel before executing this Agreement and fully understand the Agreement and the obligations arising therefrom.

24. The persons executing this Agreement below represent that they have full authority to legally bind the parties to this Agreement.

25. The parties hereto and each Class Member hereby irrevocably submit to the exclusive jurisdiction of this Court for any suit, action, proceeding or dispute arising out of or relating to the Settlement Agreement or the applicability of the Agreement and exhibits thereto.

26. The parties hereto and each Class Member hereby agree that California law shall govern with respect to the enforcement of this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date written above.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Michael Shames, Lead Plaintiff,  
Individually and on behalf of the Class

DATED: \_\_\_\_\_

\_\_\_\_\_  
Jerry Sanders, Mayor, on behalf of  
The City of San Diego, Defendant

#### **EXHIBIT LIST**

A - PROPOSED ORDER CERTIFYING SETTLEMENT CLASS AND PRELIMINARILY APPROVING SETTLEMENT AND FORM AND MANNER OF CLASS NOTICE

B - SUMMARY NOTICE OF CLASS ACTION SETTLEMENT

C - NOTICE TO CLASS OF PENDENCY OF CLASS ACTION SETTLEMENT

D - PROPOSED ORDER OF FINAL JUDGMENT AND DISMISSAL

E - SEWER REFUND PROOF OF CLAIM FORM

Approved as to form and content:

DATED: December \_\_, 2006

James C. Krause, Esq.  
Eric J. Benink, Esq.  
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San Diego, CA 92101  
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BY: \_\_\_\_\_  
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Michael Shames

ADDITIONAL PLAINTIFF'S COUNSEL

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Tel: (504) 581-4892  
Fax: (504) 561-6024

DATED: December \_\_, 2006

CITY OF SAN DIEGO

By: \_\_\_\_\_  
John Riley, Esq.  
Deputy City Attorney



## Exhibit A

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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 FOR THE COUNTY OF SAN DIEGO  
9 CENTRAL DIVISION

10 MICHAEL SHAMES, individually and on ) Case No. GIC831539  
11 behalf of all others similarly situated, )  
12 Plaintiff, ) [PROPOSED] ORDER CERTIFYING  
13 vs. ) SETTLEMENT CLASS AND  
14 THE CITY OF SAN DIEGO; and DOES 1 ) PRELIMINARILY APPROVING  
15 through 10, inclusive, ) SETTLEMENT AND FORM AND MANNER  
16 Defendants. ) OF CLASS NOTICE  
17 ) Date:  
18 ) Time:  
19 ) Place: Department 71

20 Hon. Ronald S. Prager

21 This matter having come before the Court as an *ex parte* Motion for Preliminary Approval  
22 of Settlement Agreement entered into by Plaintiff Michael Shames and defendant, the City of San  
23 Diego, and having considered all of the papers and all supporting documents, and having considered  
24 the arguments made by the parties at the hearing, and good cause appearing thereon, it is hereby  
25 Ordered that:

26 1. The Settlement Agreement entered into between Plaintiff, Michael Shames, and  
27 defendant, the City of San Diego, on \_\_\_\_\_ appears, upon preliminary review,  
28 to be fair, reasonable and adequate to the class. Accordingly, the proposed settlement is  
preliminarily approved, pending a final hearing as provided for herein.

2. Upon the stipulation of the parties, the Court certifies a Settlement Class, defined as

1 follows:

2 All City of San Diego Single Family Residential ("SFR") sewer account holders in  
3 the City's Municipal System who held accounts during any time period from May 23,  
4 1994 through September 30, 2004, inclusive.

5 3. The Court finds the prerequisites to a class action have been satisfied in that:

- 6 a. there are numerous class members so that joinder of their claims is impracticable;
- 7 b. the claims of the class representative are typical of those of the other members of the  
8 class;
- 9 c. there are questions of fact and law that are common to all members of the class;  
10 the class representative will fairly and adequately protect the interests of the class and has retained  
11 counsel experienced in complex class action litigation who have and will continue to adequately  
12 represent the class;
- 13 d. a class action is superior to other available methods for the fair and efficient adjudication  
14 of this controversy, and
- 15 e. questions of fact and law common to the members of the class predominate over any  
16 questions affecting only individual members.

17 4. Plaintiff Michael Shames is certified as the class representative. Krause Kalfayan Benink  
18 & Slavens, LLP; Casey Gerry Schenk Francavilla Blatt & Penfield, LLP; Capretz & Associates; and  
19 Herman Herman Katz & Cotlar, LLP are certified as Class Counsel for the Settlement Class.

20  
21 5. The Court will hold a fairness hearing on \_\_\_\_\_, 2006 (115 days after  
22 Preliminary Approval Order) at \_\_\_\_\_, a.m. / p.m. for the following purposes:

- 23 a. To determine whether the proposed settlement is fair, reasonable and adequate and should  
24 be granted final approval by the Court;
- 25 b. To consider Class Counsels' application for attorneys fees and reimbursement of costs and  
26 expenses;
- 27 c. To determine whether a final judgment should be entered dismissing the claims of the  
28 Settlement Class with prejudice, as required by the Settlement Agreement;

1 d. To rule upon other such matters as the Court may deem appropriate.  
2

3 6. Within sixty (60) days of entry of this Order, the City shall mail a Notice to Class, in the  
4 form attached hereto as Exhibit 1, to Current SFR Customers as that term is defined in the  
5 Settlement Agreement and publish the Notice to Class in the *San Diego Union Tribune* (10) days  
6 following the mailing. Plaintiff shall publish a Web Notice, attached hereto as Exhibit 2, on the  
7 internet at the domain name www.sewerrefund.com, no later than the date the Notice to Class is  
8 mailed. (The three Notices as hereafter referred to as "the Notice.")

9 7. The Court finds the form and manner of the Notice constitute the best notice practicable  
10 under the circumstances, and meets due process requirements. The Court also finds that the Notice  
11 satisfies the requirements of Cal. Rules Ct., Rule 1859(f).

12 8. Defendant shall file, no later than five (5) days before the fairness hearing, a declaration  
13 confirming the mailing and publication of the Notice to Class. Plaintiff shall file, no later than five  
14 (5) days before the fairness hearing, a declaration confirming the publication of the Web Notice on  
15 the internet.

16 9. As provided in the Notice and Settlement Agreement, each class member shall have the  
17 right to exclude himself or herself from the Settlement Class by mailing a request for exclusion to  
18 the Class Counsel postmarked not later than fifteen (15) days before the fairness hearing. Requests  
19 for exclusion must set forth the class member's name, address and telephone number. At least five  
20 (5) days prior to the fairness hearing, Class Counsel shall file with the Court a list of all persons who  
21 have timely requested exclusion from the class.

22 10. As provided in the Notice, each class member who does not timely opt out of the class  
23 shall have the right to object to the settlement or to the request by Class Counsel for an award of  
24 attorney's fees and expenses. Objections shall be filed with the Court, and served on Class Counsel  
25 at the address below, not later than ten (10) days before the fairness hearing. Failure to timely file  
26 and serve written a objection shall preclude a class member from objecting at the fairness hearing.  
27 At least five (5) days prior to the fairness hearing, Class Counsel shall serve copies of the objection  
28 on the City.

1           11. All briefs, memoranda, petitions and affidavits to be filed in support of final approval  
2 of the settlement and for an award of attorney's fees and expenses by Class Counsel shall be filed  
3 not later than five (5) days before the fairness hearing.

4           12. The Court retains exclusive jurisdiction over this action to consider all further matters  
5 arising out of or connected with the Settlement Agreement.

6  
7 IT IS SO ORDERED.

8  
9 Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of the Superior Court

## Exhibit B

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO  
CENTRAL DIVISION

|                                                                                 |                                  |
|---------------------------------------------------------------------------------|----------------------------------|
| MICHAEL SHAMES, individually and on<br>behalf of all others similarly situated, | ) Case No. GIC831539             |
|                                                                                 | )                                |
| Plaintiff,                                                                      | ) SUMMARY NOTICE OF CLASS ACTION |
|                                                                                 | ) SETTLEMENT                     |
|                                                                                 | )                                |
| vs.                                                                             | )                                |
|                                                                                 | )                                |
| THE CITY OF SAN DIEGO; and DOES 1                                               | )                                |
| through 10, inclusive,                                                          | )                                |
|                                                                                 | )                                |
| Defendants.                                                                     | )                                |

TO ALL SINGLE-FAMILY RESIDENTIAL SEWER CUSTOMERS (WITH ADDRESSES  
WITHIN THE CITY OF SAN DIEGO LIMITS) WHO PAID SEWER BILLS FROM MAY 23,  
1994 THROUGH SEPTEMBER 30, 2004:

If you received this notice in your sewer bill, then you may be entitled to share in a FORTY  
MILLION DOLLAR (\$40,000,000.00) settlement if you choose to be a member of a Settlement  
Class provisionally certified by the Superior Court of California, for the County of San Diego. If you  
are a CURRENT single-family residential sewer customer and you reside at an address that had a  
water meter in existence as of September 30, 2004, your monthly sewer bill will be credited  
automatically for the next four years. YOU DO NOT NEED TO DO ANYTHING ELSE TO  
PARTICIPATE.

1 However, if you are NOT a CURRENT single family residential sewer customer, you still  
2 be may be entitled to a cash payment. However, you MUST submit a Proof of Claim Form no later  
3 than \_\_\_\_\_.

4  
5 The Court has scheduled a Fairness Hearing to be held on \_\_\_\_\_ before the  
6 Hon. Ronald S. Prager in Department 71 of the San Diego Superior Court, 330 West Broadway, San  
7 Diego, CA 92101 to (1) consider and determine the fairness, reasonableness, and adequacy of the  
8 Settlement described above; (2) consider whether to certify the Settlement Class and (3) consider  
9 Class Counsels' application for attorneys fees for 12.5% of the settlement fund (\$5,000,000), and  
10 reimbursement of reasonable expenses and costs.

11 More details and a complete notice explaining the proposed settlement is available at  
12 [www.sewerrefund.com](http://www.sewerrefund.com) or may be obtained by contacting Class Counsel at the address below. This  
13 will explain the deadlines and procedures if you desire to be heard at the Fairness Hearing and how  
14 you may exclude yourself from this class action if you desire.

15 Additionally, the Proof of Claim Form for non-current customers can be found at the web  
16 site or may be obtained by contacting:

17 Metropolitan Wastewater Department  
18 Public Information Section  
19 9192 Topaz Way  
20 San Diego, CA 92123-1165  
21 (858) 292-6484

22 If you have any questions regarding this Settlement Agreement, please contact the Class  
23 Counsel:

24 CLASS COUNSEL  
25 Eric J. Benink, Esq.  
26 Krause Kalfayan Benink & Slavens, LLP  
27 625 Broadway, Suite 635  
28 San Diego, CA 92101  
eric@kkbs-law.com

**DO NOT CONTACT THE COURT FOR INFORMATION**

IT IS SO ORDERED.

Dated: \_\_\_\_\_

Hon. Ronald S. Prager  
Judge of the Superior Court



## Exhibit C

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO  
CENTRAL DIVISION

|                                                                                 |                                  |
|---------------------------------------------------------------------------------|----------------------------------|
| MICHAEL SHAMES, individually and on<br>behalf of all others similarly situated, | ) Case No. GIC831539             |
|                                                                                 | )                                |
| Plaintiff,                                                                      | ) NOTICE TO CLASS OF PENDENCY OF |
|                                                                                 | ) CLASS ACTION SETTLEMENT        |
|                                                                                 | )                                |
| vs.                                                                             | )                                |
|                                                                                 | )                                |
| THE CITY OF SAN DIEGO; and DOES 1                                               | )                                |
| through 10, inclusive,                                                          | )                                |
|                                                                                 | )                                |
| Defendants.                                                                     | )                                |

TO ALL CITY OF SAN DIEGO SINGLE-FAMILY RESIDENTIAL SEWER ACCOUNT  
HOLDERS IN THE CITY'S MUNICIPAL SEWER SYSTEM (ADDRESSES WITHIN THE CITY  
OF SAN DIEGO LIMITS) WHO HELD SEWER ACCOUNTS DURING ANY TIME PERIOD  
MAY 23, 1994 THROUGH SEPTEMBER 30, 2004, INCLUSIVE:

PLEASE BE ADVISED THAT YOU MAY BE A MEMBER OF A SETTLEMENT CLASS  
PROVISIONALLY CERTIFIED BY THE SUPERIOR COURT OF CALIFORNIA, FOR THE  
COUNTY OF SAN DIEGO, AND THAT YOU MAY BE ENTITLED TO SHARE IN THE  
PROCEEDS OF A PROPOSED SETTLEMENT DESCRIBED IN THIS NOTICE.

THIS NOTICE EXPLAINS IMPORTANT RIGHTS YOU HAVE AS A RESULT OF A  
PROPOSED SETTLEMENT WITH THE CITY OF SAN DIEGO FOR FORTY MILLION  
DOLLARS (\$40,000,000.00). PLEASE READ THIS NOTICE CAREFULLY.

I.  
**WHAT WAS THIS LAWSUIT ABOUT?**

A lawsuit was filed by Lead Plaintiff Michael Shames ("Shames") as a proposed class action on June 16, 2004 in the Superior Court for the County of San Diego, captioned *Michael Shames, an individual, on behalf of all others similarly situated v. the City of San Diego*. Shames alleged that the City overcharged Single Family Residential ("SFR") sewer account holders in the City's Municipal System (those within the City of San Diego limits) from May 23, 1994 through September 30, 2004, as a result of a deliberate failure to include a cost recovery component for biological oxygen demand ("BOD") in the City's sewer rate structure. BOD is a measurement of oxygen needed to break down organic pollutants. The suit alleged that commercial sewer customers benefitted as a result of this failure because commercial customers generally discharge organic pollutants into the wastewater system at a higher rate than SFR customers.

Shames alleged that the failure to include a BOD cost component in the rate structure violated the California Constitution, article XIID, Section 6(b)(3) which prohibits municipalities, like the City, from charging a fee that exceeds the proportional cost of the service attributable to the parcel or land on which the service is provided. In other words, each customer should only pay for the costs associated with the customer's use of the service. Shames also alleged that the City breached State Revolving Fund loans and Federal Clean Water Act grants obtained by the City to fund capital projects and that SFR ratepayers were third-party beneficiaries of those loans and grants.

The City asserted numerous defenses to the lawsuit, including, among other things, 1) the Constitutional article did not provide for a monetary remedy, 2) the sewer fees were not subject to the Constitutional article because they were not "property-related" fees, 3) the statute of limitations barred all claims for overcharges older than year one, 4) this action could not be

1 certified as a class, and 5) sewer customers were not intended third-party beneficiaries of the  
2 loans and grants and thus, could not assert a breach of contract claim.

3 On or about September 15, 2005, the City Attorney Michael Aguirre issued a report  
4 entitled *Wastewater Interim Report No. 1, City Officials' Failure to Disclose Material Facts in*  
5 *Connection with the Offer and Sale of Wastewater Bonds and Related Improper Activities*  
6 discussing the history of the City's activities in connection with the BOD cost recovery  
7 component. Click here to review the report:  
8 <http://www.sandiego.gov/cityattorney/reports/pdf/interimreport1wastew.pdf>.  
9

## 11 II. 12 CLASS CERTIFICATION

13 The court has provisionally certified a Settlement Class defined as follows:

14 All City of San Diego Single-Family Residential ("SFR") sewer account holders  
15 in the City's Municipal System (addresses within the City of San Diego limits)  
16 who held sewer accounts during any time period May 23, 1994 through  
17 September 30, 2004, inclusive.

18 If you meet that definition, you will automatically become a member, and be bound by  
19 the terms of the Settlement, unless you specifically request to be excluded from the class, as  
20 described below in Section VI.

## 21 III. 22 WHAT WAS THE PROCESS FOR SETTLING THIS LAWSUIT?

23 Beginning in September 2005, Class Counsel for Plaintiff and attorneys for the City of San  
24 Diego entered into arm's length settlement negotiations. Specifically, the parties retained Hon. Harry  
25 McCue (Ret.) a well-respected and highly-experienced mediator in significant complex litigation to  
26 mediate the dispute.  
27  
28

1 Prior to and during the settlement negotiations, Class Counsel obtained and reviewed  
2 thousands of relevant documents including e-mails, loan and grant documents, wastewater  
3 department memos, third-party records, City Council records, videotapes of City Council sessions,  
4 sewer rate data, and an *August 8, 2006 Report of the Audit Committee of the City of San Diego*  
5 prepared by outside consultants to the City. Class Counsel also retained and conferred with a sewer  
6 rate expert to monitor and assess the City's calculations of the alleged damages arising from the  
7 claims asserted in this lawsuit. The City hired an outside consultant to assist in this process. The  
8 expert, consultant, and employees of the City's Metropolitan Wastewater Department met on  
9 numerous occasions to confer about the alleged damages calculations. The parties also submitted  
10 legal briefs to Judge McCue on their respective legal positions and defenses.  
11

12  
13 The parties engaged in eleven joint mediation sessions over a twelve-month period, and  
14 conferred with Judge McCue separately on dozens of occasions. Issues of damages, and relevant  
15 legal, and factual issues, were thoroughly analyzed and discussed. The parties, Class Counsel and  
16 the mediator agreed that \$40 million was an appropriate settlement considering these issues.  
17 Although the damages calculations were complex, and the City proposed alternate calculation  
18 methods demonstrating lower damages figures, Class Counsel believes that the most SFR customers  
19 were overcharged in any single year, under any calculation method, was approximately \$18.8  
20 million. Thus, \$40 million represents a recovery of an approximately 2.13 year period of the  
21 overcharges.  
22

23 As part of the settlement the City further agreed to ensure its compliance with federal codes  
24 and regulations relating to the rate proportionality in the future and to allow a non-profit  
25 organization, to solicit donations from sewer customers to fund the monitoring of the rate-setting  
26 process by an expert in the future, to ensure that SFR customers are treated properly.  
27  
28

1 Approximately one month after the terms of the settlement agreement were reached in  
2 principle, the parties agreed to allow Judge McCue to recommend a proper attorney fee award.  
3 Judge McCue recommended that 12.5% of the fund (or \$5,000,000) be awarded to Class Counsel  
4 for their work, the risks assumed in this case, and the significant benefit achieved. Class Counsel  
5 will request that the Court award this fee.  
6

7 **IV.**  
8 **WHAT DOES THIS SETTLEMENT MEAN TO YOU?**

9 Under the Settlement Agreement, the City will generate Settlement Revenues of FORTY  
10 MILLION (\$40,000,000.00). If the fee application is approved by the Court, Class counsel will be  
11 awarded 12.5% of the Settlement Revenues (FIVE MILLION DOLLARS \$5,000,000), plus  
12 reimbursement of reasonable costs and expenses from the Settlement Fund.

13 The balance of the fund will distributed to two separate groups of persons, Non-Current SFR  
14 Customers, and Monthly SFR Customers as defined below.  
15

| 16 Non-Current SFR Customer                                                                                                                                                                                                                                | Monthly SFR Customer                                                                                                                                                                                                                                    |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 17 An SFR Customer who qualifies for BOTH of<br>18 the following:<br>19 a) Held an SFR sewer account from<br>20 May 23, 1994 through September 1, 2004,<br>21 inclusive <u>AND</u><br>22 b) No longer holds an SFR sewer<br>23 account in the city limits. | 24 An SFR Customers who qualifies for BOTH<br>of the following:<br>a) Is a current SFR sewer account<br>holder; <u>AND</u><br>b) The water meter used to calculate<br>the sewer charges for the account was in use<br>no later than September 30, 2004. |

25 **TO NON-CURRENT SFR CUSTOMERS:**

26 If you are a **Non-Current SFR Customer**, **YOUR MUST COMPLETE A PROOF OF**  
27 **CLAIM FORM** and mail that Proof of Claim Form (hyperlink) to the City of San Diego. The  
28

1 envelope must be postmarked no later than xxxxxx, 2007. You will receive \$1.50 for each month  
2 that you held an SFR sewer account from May 23, 1994 through September 1, 2004. You will  
3 receive a lump sum payment in approximately six to nine months.

4 **TO MONTHLY SFR CUSTOMERS:**

5  
6 If you are a **Monthly SFR Customer**, **YOU DO NOT NEED TO DO ANYTHING**. Your  
7 sewer account will be credited on a monthly basis for four years, so long as you hold that account.  
8 If you terminate your account before the end of the four year period (e.g. you move out of the  
9 residence), the next person(s) holding an account at that residence will begin receiving monthly  
10 credits until the end of the four year period.

11  
12 There are approximately 223,326 Monthly SFR Customers. Thus in Years, 2, 3, and 4, the  
13 monthly credit per customer will be approximately xxxx. (Year 1 credits cannot be calculated until  
14 the number of Non-Current Customers submitting Claim Forms is known).

15 **V.**  
16 **THE FAIRNESS HEARING**

17 The Court has scheduled a Fairness Hearing to be held on xxxxxxxx before the Hon. Ronald  
18 S. Prager in Department 71 of the San Diego Superior Court, 330 West Broadway, San Diego, CA  
19 92101 to (1) consider and determine the fairness, reasonableness, and adequacy of this Settlement  
20 described above; (2) consider whether to certify the Settlement Class and (3) consider Class  
21 Counsels' application for attorneys fees of \$5,000,000, and reimbursement of reasonable expenses  
22 and costs. The Court may adjourn or continue the Fairness Hearing from time to time without  
23 further notice.

24  
25 If you are a member of the Settlement Class, as defined above, you may appear personally  
26 or through counsel at the Fairness Hearing to object or to express your views regarding the fairness  
27 of the settlement and the application for Class Counsel's fees and reimbursement of costs and  
28

1 expenses. Any member of the Settlement Class seeking to object or to be heard must file a written  
2 Notice of Intention to Appear with the San Diego Superior Court, Department 71, San Diego, CA  
3 92101 no later than xxxxx, 2007, which must specify the person's name, address, and telephone  
4 number, the address at which the person resided during the class period, together with a statement  
5 explaining the basis for the objection, along with any papers or briefs the person wishes the Court  
6 to consider. A copy of the Notice of Intention to Appear must also be served on Class Counsel no  
7 later than xxxxx, 2007 at the address at the end of this Notice:

9  
10 **VI.  
REQUEST FOR EXCLUSION**

11 If you are a member of the Settlement Class (a single family residential sewer customer  
12 during the time period May 23, 1994 through September 30, 2004 within the City limits), you may  
13 request to be excluded from the Class. If you request exclusion, you will not be able to participate  
14 in any distribution from the Settlement Fund and you will not be bound by any of the terms and  
15 conditions of the Settlement Agreement. If you request exclusion, you may pursue any legal rights  
16 you may have, but at your expense. If you do nothing, you will be deemed to be a member of the  
17 Settlement Class; you will be bound by the terms of the Settlement Agreement; and you will be  
18 barred from asserting, and will release the City and related persons and entities, from all claims that  
19 were asserted or could have been asserted in this lawsuit. **However, even if you do not exclude**  
20 **yourself, you may still need to file a Proof of Claim Form if you no longer hold a single family**  
21 **residential account, to participate in the distribution of settlement funds. (See Section IV.)**

22  
23  
24 To request exclusion you must send a written request, by first class mail, postmarked no later  
25 than xxxx, 2007, specifically stating: "I request to be excluded from the Shames v. City of San Diego  
26 Class Action," together with your name, current address and telephone number, and the address at  
27  
28



1 which you received sewer service during the time period May 23, 1994 through September 30, 2004  
2 to Class Counsel at the address at the end of this Notice.  
3

4 **VII.**  
5 **ADDITIONAL INFORMATION**

6 This notice is only a general description of the Settlement, the proposed plan of distribution  
7 of the Settlement Fund, and Class Counsel's application for an award of attorneys' fees and  
8 reimbursement of expenses. For the full details of the matters described in this Notice, and for  
9 further information concerning the Action, the public records may be inspected at the San Diego  
10 Superior Court, 330 West Broadway, San Diego, CA 92101 during normal business hours.

11 You may also contact Class Counsel with further questions:

12 CLASS COUNSEL

13  
14 Eric J. Benink, Esq.  
15 Krause Kalfayan Benink & Slavens, LLP.  
16 625 Broadway, Suite 635  
17 San Diego, CA 92101  
18 eric@kkbs-law.com

19 IT IS SO ORDERED.

20 Dated: \_\_\_\_\_

21 Ronald S. Prager  
22 Judge of the Superior Court  
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## Exhibit D

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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 FOR THE COUNTY OF SAN DIEGO  
9 CENTRAL DIVISION

10 MICHAEL SHAMES, individually and on ) Case No. GIC831539  
11 behalf of all others similarly situated, )  
12 Plaintiff, ) [PROPOSED] ORDER OF FINAL  
13 vs. ) JUDGMENT AND DISMISSAL  
14 THE CITY OF SAN DIEGO; and DOES 1 ) Date:  
15 through 10, inclusive, ) Time:  
16 Defendants. ) Place: Department 71  
17 ) Hon. Ronald S. Prager  
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29 This matter, having come before the Court on Plaintiff's Motion for Final Approval and  
30 Application for Attorneys Fees and Reimbursement of Costs of the proposed class action  
31 settlement with defendant, the City of San Diego; the Court having considered all papers filed  
32 and arguments made with respect to the Settlement Agreement, and having provisionally  
33 certified, by Order dated \_\_\_\_\_, a Settlement Class, and the Court, being fully  
34 advised in the premises, finds that:

35 1. This action satisfies the applicable prerequisites for class action treatment under  
36 C.C.P. § 382. The Settlement Class as defined in the Settlement Agreement (the "Class") is so  
37 numerous that joinder of all members is not practicable, there are questions of law and fact  
38 common to the Class, the claims of the Lead Plaintiff, Michael Shames, are typical of the claims  
39 of the Class, and the Lead Plaintiff will fairly and adequately protect the interests of the Class.  
40 Questions of law and fact common to the members of the Class predominate over any questions

1 affecting only individual members, and a class action is superior to other available methods for  
2 the fair and efficient adjudication of the controversy.

3 2. Notice to class has been provided in accordance with the Court's Preliminary Approval  
4 Order dated \_\_\_\_\_, and such notice has been given in an adequate and  
5 sufficient manner, constitutes the best notice practicable under the circumstances, and satisfies  
6 due process. The notice also satisfies the requirements of Cal Rules of Ct, Rule 1859(f).

7 3. The notice advised members of the Class of their right to exclude themselves from the  
8 Class. \_\_\_\_\_ persons have filed timely and valid requests for exclusion pursuant to the Notice.  
9 They are listed on the sheet attached hereto as Exhibit A and are not bound by the terms of the  
10 Settlement Agreement or this Final Judgment in any way.

11 4. The Settlement Agreement was arrived at as a result of arms-length negotiations  
12 conducted in good faith by counsel for the parties, and is supported by the Lead Plaintiff.

13 5. The settlement terms set forth in the Settlement Agreement are fair, reasonable and  
14 adequate to the members of the class in light of the complexity, expense and duration of  
15 litigation and the risks involved in establishing liability and damages and in maintaining the class  
16 action through trial and appeal.

17 6. The monetary relief provided under the Settlement Agreement constitutes fair value  
18 given in exchange for the releases of the Settled Claims against the Released Parties, as those  
19 terms are defined in the Settlement Agreement.

20 7. The request by Class Counsel for attorneys fees and reimbursement of costs is fair,  
21 adequate, and reasonable, in light of the risks assumed by the attorneys, the complexity of the  
22 litigation, and the recovery achieved.

23 8. The parties and each Class Member have irrevocably submitted to the exclusive  
24 jurisdiction of this Court for any suit, action, proceeding or dispute arising out of the Settlement  
25 Agreement.

26 9. It is in the best interests of the parties and the Class Members and consistent with  
27 principles of judicial economy that any dispute between any Class Member (including any  
28 dispute as to whether any person is a class member) and any Released Party (as those terms are

1 defined in the Settlement Agreement) which in any way relates to the applicability or scope of the  
2 Settlement Agreement or the Final Judgment and Order of Dismissal should be presented  
3 exclusively to this Court for resolution by this Court.  
4

5 **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:**

6 1. The Court has jurisdiction over the subject matter of this litigation, and over all parties  
7 to this litigation, including all members of the Settlement Class.

8 2. The Court certifies a Settlement Class, for settlement with defendant, the City of San  
9 Diego, defined as follows:

10 All City of San Diego Single Family Residential ("SFR") sewer account holders  
11 in the City's Municipal System who held accounts during any time period from  
May 23, 1994 through September 30, 2004, inclusive.

12 3. The Settlement Agreement submitted by the parties is finally approved as fair,  
13 reasonable and adequate and in the best interests of the Class, and the parties are hereby directed  
14 to consummate the Settlement Agreement in accordance with its terms and are hereby bound by  
15 the terms therein.

16 4. This action is hereby dismissed on the merits, with prejudice and without costs,  
17 (except as provided by the Settlement Agreement) as to the City of San Diego, and all DOE  
18 defendants.

19 5. The application for attorneys fees in the amount of \$ \_\_\_\_\_ and  
20 reimbursement of \$ \_\_\_\_\_ in costs and expenses is granted. The fees and costs are  
21 to be paid in accordance with terms of the Settlement Agreement.

22 6. Without affecting the finality of this judgment, the Court hereby reserves and retains  
23 jurisdiction over this action, including the administration and consummation of the Settlement  
24 Agreement. Furthermore, Michael Shames, the City of San Diego, and each member of the class  
25 are hereby deemed to have submitted irrevocably to the exclusive jurisdiction of this Court for  
26 any suit, action, proceeding or dispute arising out of or relating to this Order, the Settlement  
27 Agreement or the applicability of the Settlement Agreement.

28 **IT IS SO ORDERED.**

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Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of the Superior Court

## Exhibit E

## SEWER REFUND PROOF OF CLAIM FORM

If you qualify, please fill in all of the information below and mail the **signed**, completed claim form to:

Metropolitan Wastewater Department  
Public Information Section  
9192 Topaz Way  
San Diego, CA 92123-1165  
(858) 292-6484

To be valid, this Claim Form must be postmarked no later than **xxxxx, 2007**. Please provide **all** of the requested information and remember to sign your Claim Form. At the conclusion of the claims process, all valid claims will be paid by check mailed to your current address as set forth below.

Name \_\_\_\_\_

**Current** Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Telephone Number \_\_\_\_\_

**Former** address where you held a City of San Diego single-family residential sewer account:

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Time Period when you were a City of San Diego single-family residential sewer customer:

From \_\_\_\_\_ (mo) \_\_\_\_\_ (year) to \_\_\_\_\_ (mo) \_\_\_\_\_ (year).

Please complete a separate Proof of Claim Form for each qualifying residence.

**TURN TO NEXT PAGE TO COMPLETE FORM**



*By signing below I certify under penalty of perjury under the laws of the state of California that:*

*(1) I held a Single Family Residential Sewer Account during the time period May 23, 1994 through September 30, 2004, in the City of San Diego and*

*(2) I am not currently a Single Family Residential Sewer Account holder in the City of San Diego.*

*I understand that I may need to submit additional documentation to support this claim, if requested.*

Signed on \_\_\_\_\_ at \_\_\_\_\_  
[DATE] [PRINT CITY AND STATE]

\_\_\_\_\_  
Signature of Claimant (only one signature required)

Sewer Account Number, if known (optional)\* \_\_\_\_\_

\* Providing the account number may speed the processing of your claim.

## TERMINATION RIGHTS AGREEMENT

This Termination Rights Agreement is entered into as of this 6th day of December 2006, between Michael Shames ("Plaintiff") and the City of San Diego ("the City"), with reference to paragraph 6 of the Settlement Agreement entered into by and between the parties on December 6, 2006. The Settlement Agreement, its terms, and its definitions are hereby incorporated by reference.

The parties hereby agree that the City shall have the option to terminate and void the Settlement Agreement if more than five percent (5.00%) of the putative Class Members timely and properly opt out of the Settlement Class pursuant to paragraph 6 of the Settlement Agreement.

If the City seeks to exercise this option, it must do so by giving Class Counsel notice, in writing, before the date of the Fairness Hearing.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Michael Shames, Lead Plaintiff,  
Individually and on behalf of the Class

DATED: \_\_\_\_\_

\_\_\_\_\_  
Jerry Sanders, Mayor, on behalf of  
The City of San Diego, Defendant